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Before the
Federal Communications Commission
Washington, D.C. 20554

DICT

In the Matter of

Second Periodic Review of the
Commission's Rules and Policies
Affecting the Conversion
To Digital Television)
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MB Docket No. 03-15

RM 9832

ORDER**Adopted: October 30, 2003****Released: October 31, 2003**

By the Chief, Media Bureau:

1. Twin Cities Public Television, Inc. ("TPT"), licensee of two noncommercial educational television stations in Minneapolis-St. Paul, Minnesota, requests a temporary waiver of the DTV simulcast requirements in Section 73.624(f) of our rules.¹ As discussed below, we grant TPT's waiver request.

2. *Background.* Section 73.624(f) of the Commission's rules requires DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003.² This requirement increases to a 75% simulcast requirement on April 1, 2004, and a 100% requirement on April 1, 2005.³ The simulcasting requirement was intended to ensure that consumers enjoy continuity of free over-the-air video programming service when analog spectrum is reclaimed at the end of the transition. The Commission stated that it may be difficult to terminate analog broadcast service if broadcasters show programs on their analog channels that are not available on their digital channels.⁴

3. In the *Notice of Proposed Rule Making* initiating the second periodic review of the transition to digital television, adopted January 15, 2003 ("*Second DTV Periodic Review NPRM*"), the

¹ 47 C.F.R. § 73.624(f)

² On April 29, 2003, the Media Bureau issued an Order granting to noncommercial educational stations a six-month waiver of certain simulcast requirements until November 1, 2003. *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, 18 FCC Rcd. 8166 (2003) ("*Simulcast Order*").

³ 47 C.F.R. § 73.624(f)(i)-(iii).

⁴ *Fifth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 12809, 12833, ¶ 56 (1997) ("*Fifth Report and Order*"), *on recon.*, 13 FCC Rcd 6860, *on further recon.*, 14 FCC Rcd 1348 (1998), *recon. dismissed*, DA 99-1361 (rel. July 12, 1999), *recon. dismissed*, FCC 00-59 (rel. Feb. 23, 2000).

Commission sought comment on whether it should retain, revise, or remove the simulcast requirement.⁵ Among other questions, the Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcast requirement unnecessary. The Commission also asked whether the simulcasting requirement is causing broadcasters to forego creative uses of digital technology, and if something less than the ultimate 100% simulcast requirement would be sufficient to protect analog viewers while allowing for innovation on DTV channels. The Commission also sought comment on how to define simulcasting, and whether the current dates for the phase-in of simulcast requirements are appropriate. The *Second DTV Periodic Review NPRM* did not propose to reduce or eliminate the minimum digital operating requirements that are currently pegged to the simulcast requirements.⁶

4. *TPT Waiver Request.* TPT requests a temporary waiver of Section 73.624(f), pending Commission action on the simulcasting issues in the second DTV periodic review proceeding.⁷ TPT seeks to simulcast the analog programming of both of its NCE stations on one of its associated digital stations, KTCI-DT, and to use the other digital station, KTCA-DT, to air high definition programming full time. TPT states that KTCI is operating in both analog and digital mode and would carry the simulcast programming of both KTCA-TV and KTCI-TV as part of a multicast service on its digital channel. TPT states that it would carry high definition programming on KTCA-DT, operating pursuant to special temporary authority ("STA").⁸ TPT expects both KTCI and KTCA to be on the air operating in both analog and digital modes by November 1, 2003.⁹

5. TPT asserts that its plan to offer continuous high definition television programming on KTCA-DT will increase cable carriage and user acceptance of DTV broadcasting. TPT argues that its proposal is similar to a waiver request already granted to Milwaukee Area Technical College ("MATC").¹⁰ TPT states that its proposal would similarly satisfy the purpose behind the simulcasting requirement while allowing TPT to experiment with innovative uses of digital programming by offering exclusively HDTV programming on KTCA-DT.

6. We find good cause to grant TPT a waiver of the simulcast requirements in Section 73.624(f), pending the issuance of an order in the second DTV periodic review, to permit it to implement

⁵ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Public Interest Obligations of TV Broadcast Licensees*, 18 FCC Rcd 1279 (2003).

⁶ To the contrary, the Commission proposed that, if the simulcasting requirements in Section 73.624(f) were reduced or eliminated, Section 73.624(b)(1) would be amended to require DTV stations subject to the May 1, 2002, or May 1, 2003, construction deadlines to air, by April 1, 2003, a digital signal for an amount of time equivalent to 50% of the time they provide an analog signal. The digital signal must be aired during prime time hours. This minimum digital operating requirement would increase to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and to 100% on April 1, 2005. *Second DTV Periodic Review NPRM*, 18 FCC Rcd at 1303, ¶ 68.

⁷ TPT, Request for Temporary Waiver of DTV Simulcast Requirements (Sept. 4, 2003) ("TPT Request").

⁸ *TPT Request* at 2. The Media Bureau granted KTCA-DT's STA on September 2, 2003. Letter from Clay Pendarvis, Associate Chief, Video Division, to Twin Cities Public Television, Inc. (Sept. 2, 2003).

⁹ *TPT Request* at 2.

¹⁰ See *Simulcast Order*, 18 FCC Rcd at 8169.

the plan it proposes in its waiver request.¹¹ We note that, under TPT's proposal, it states that it will be providing simulcast digital service of both of its analog channels to the Minneapolis-St. Paul communities. Thus, though not complying literally with the simulcast rule, it will be serving the purposes underlying the rule. By temporarily waiving the current rules, we are permitting TPT to experiment with innovative uses of its other digital channel and to offer additional digital programming to the community. In the second DTV periodic review, the Commission will consider, among other issues related to the simulcast requirement, whether the current simulcast rules should be amended to facilitate similar and other innovative uses of digital stations.

7 This action in no way waives the existing rules regarding the minimum hours of operation on digital channels. Thus, each TPT station must air a digital signal for an amount of time equivalent to at least 50% of the time it provides an analog signal. In addition, a digital video program signal must be aired during prime time hours. The minimum digital operating requirement increases to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and to 100% on April 1, 2005. Stations, both commercial and NCE, that have been granted an extension of time to construct their DTV facilities must comply with the minimum digital operation requirements in effect at the time the station commences digital operations.

8. **IT IS HEREBY ORDERED** that, pursuant to the authority contained in Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Request for Temporary Waiver of DTV Simulcasting Requirements filed by Twin Cities Public Television, Inc **IS GRANTED** to the extent described herein

9. This action is taken pursuant to authority delegated by Sections 0.61(h) and 0.283 of the Commission's rules, 47 C.F.R. §§ 0.61(h), 0.283.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

¹¹ 5 U.S.C. § 553(b)(3)(B). The Commission may waive its rules when good cause is shown. See 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).